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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL W. HENRY,

Defendant and Appellant.

2d Crim. No. B261518
(Super. Ct. No. SA077164-01)
(Los Angeles County)

Michael W. Henry appeals an order denying his petition to recall his felony sentence for petty theft with a prior (Pen. Code, § 666, subd. (b))¹ pursuant to the Safe Neighborhoods and Schools Act ("the Act" or "Proposition 47"). (§ 1170.18.) We conclude, among other things, that the trial court did not abuse its discretion by denying the petition and ruling that a new sentence would result in an unreasonable risk of danger to public safety. (§ 1170.18, subd. (b)(3).) We affirm.

FACTS

Henry was convicted of petty theft with a prior, a felony, and sentenced to a prison term of five years. After the passage of Proposition 47, he filed a petition for resentencing. Henry alleged that, as a result of Proposition 47, his petty theft with a prior offense "has been made a misdemeanor."

¹ All statutory references are to the Penal Code.

The People filed a response and agreed his offense was a crime "eligible" for resentencing under Proposition 47. But they requested the trial court to deny the petition based on his criminal record.

The trial court held a hearing, reviewed his criminal record, and denied the petition. It found Henry is "statutorily qualified to petition for relief," but "poses an unreasonable risk to public safety."

DISCUSSION

Proposition 47 Relief

Henry contends the trial court abused its discretion by denying his petition because there was insufficient evidence to support the finding that he posed an unreasonable risk of danger to public safety. We disagree.

"Proposition 47 made certain drug and theft offenses misdemeanors instead of felonies" (*People v. Shabazz* (2015) 237 Cal.App.4th 303, 308.) It established a procedure for defendants convicted of certain felonies to petition to recall their sentences and be resentenced to misdemeanors if they meet the qualifications of the Act. (§ 1170.18, subds. (a) & (b); Prop. 47, §§ 5-13.)

Resentencing is not appropriate where the trial court, "in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." (§ 1170.18, subd. (b).) "In exercising its discretion, the court may consider all of the following: [¶] (1) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes. [¶] (2) The petitioner's disciplinary record and record of rehabilitation while incarcerated. [¶] (3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety." (*Id.*, subd. (b)(1)-(3).) "As used throughout this Code, 'unreasonable risk of danger to public safety' means an unreasonable risk that the petitioner will commit a new violent felony within

the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667." (*Id.*, subd. (c).)

In denying the petition, the trial court found Henry has "a consistent record with convictions for violent offenses" and has not complied with his parole conditions. Henry has not shown that the court erred.

The 2011 "pre-conviction" probation report indicated that Henry has a "lengthy" criminal record with 12 prior convictions--7 felonies and 5 misdemeanors. Several of his convictions involved violent offenses. The trial court noted that his criminal record began in 1977. Henry was convicted of assault with intent to commit murder. In 1981, he was arrested for robbery, convicted of that offense, and sentenced to three years in prison. In 1991, he was convicted of assault with a deadly weapon.

In 1997, Henry was convicted of assault with a semiautomatic rifle on a police officer. He was sentenced to nine years in prison. In committing that offense, he "pulled the weapon from his waistband, pointed it directly at [the officer], and fired a round." The People claim that "[i]t was only the officer's luck that he was not shot."

The record reflects that Henry's criminal history shows he committed his offenses in the 1970's, 1980's, 1990's and continuing into the 21st century. The trial court could reasonably infer that Henry had not made any serious efforts at rehabilitation or to cease his criminal activities. In 2006, Henry was convicted of possession of controlled substance paraphernalia. In 2008, he was convicted of petty theft with a prior. In 2009, he was convicted of failing to appear in court. In 2011, Henry was on parole, but he "absconded parole," and his parole agent "has never seen him." He was also on parole at the time he committed his latest offense.

The probation report concludes that Henry "continues to pose a risk to the community." Henry has "a lack of willingness" to conduct himself "as a law abiding citizen." The report's summary of his criminal history shows that Henry has spent decades as a recidivist adult offender repeatedly going in and out of prisons and jails.

We have reviewed Henry's remaining contentions and conclude he has not shown any grounds for reversal.

DISPOSITION

The order denying the petition is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Kathryn A. Solorzano, Judge
Superior Court County of Los Angeles

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Defendant and Appellant.

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